2687

SUPREME COURT OF THE UNITED STATES.

No. 259.

THE UNITED STATES, APPELLANTS,

vs.

WILLIAM BENNITZ.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIDEON, PRINT.

Transcript of the proceedings in case No. 626—William Bennitz, claimant, vs. The United States, defendant—for the place named Breisgan.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this 24th day of February, A. D. one thousand eight hundred and fifty-three, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of William Bennitz, for the place named "Breisgan," was presented, and ordered to be filed and docketed with No. 626, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *September* 3*d*, 1853.

In case No. 626, William Bennitz, for the place named "Breisgan," the deposition of J. J. Warner, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, with document marked No. 1, A. F., annexed thereto, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *Sept.* 25, 1854.

Case No. 626 was submitted without argument.

SAN FRANCISCO, *September* 26*th*, 1854.

In the same case, Commissioner S. B. Farwell delivered the opinion of the board, rejecting the claim.

(Vide page of this Transcript.)

And the following order was made, to wit:

(Vide page of this Transcript.)

Petition.

To the Board of Land Commission for the ascertaining and settling of private land claims in California:

The petition of William Bennitz respectfully represents to your honorable board, that having been for a long time in the military service of California, from the year 1840, and not having received any recompensation for it, he made and presented his petition in

writing to Governor Micheltorena on the 18th June, 1844, soliciting for himself the tract of land hereafter described.

That said governor referred the subject to the secretary of the department, who referred it for further report to John A. Sutter.

That said Sutter, on the 16th July, 1844, reported in favor of your *petition.* That said governor thereupon, on the 26th day of July, 1844, granted your petitioner provisionally the occupancy of said land, promising at the same time to inspect said land personally, and then to execute the formal title-papers.

And your petitioner further saith, that said Micheltorena never came to those parts of the country where your petitioner's land is situated, and therefore did not execute a grant to him; but that your petitioner has, from said year 1844, been in the quiet and peaceable possession of said land, without becoming aware of the existence of any title conflicting with, or superior to his own.

And your petitioner further saith, that said land is situated in the present county of Shasta, on the east shore of the Sacramento river, is known by the name of "Breisgan," and bounded as follows: commencing at a point on the eastern shore of the Sacramento river, half a league south of the junction of the Arroyo de los Eresnos with the Sacramento; thence following the eastern shore of said Sacramento, about two leagues south to the most northern point of an island formed by said Sacramento; thence along the western line of said island to its most southern point; thence at right angles due east one league and a half; thence at right angles north to a point due east of the point of commencement; thence west to the place of beginning, containing altogether five Spanish square leagues, more or less; and your petitioner further saith, that the documents above referred to are herewith submitted to your hon. body's inspection.

Your petitioner therefore claims to be the owner of said land, and prays that your hon. body will confirm and validate his claim and title thereto.

CLARK, TAYLOR & BECKH,
Att'ys for Bennitz.

Filed in office Feb'y 24th, 1853.

GEO. FISHER, *Sec'y.*

Recorded in vol. 1 of Petitions, on pages 624, 625.

GEO. FISHER, *Sec'y.*

Deposition of J. J. Warner.

No. 626.

OFFICE OF COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA.

This day before Com'r Alpheus Felch came J. J. Warner, a witness in behalf of claimant, Wm. Bennitz, No. 626, who, after being duly sworn, deposed as follows:

Questions by Mr. Clark, Att'y for Claimant.

1st question. What is your name, age, and place of business?

Answer. My name is J. J. Warner; my age forty-five years; and I reside at San Diego, in the State of California.

2d question. Look upon the document now here presented to you, marked Exhibit No. 1, with the initials A. F., purporting to be a petition for a grant of land to Governor Micheltorena, and signed by Guillermo Bennitz, with other documents on the same sheet of paper attached to this deposition, and say what you know of the genuineness of the signatures appearing on said document?

Answer. I have looked on the document; I am acquainted with the signatures of Manuel Micheltorena and Manuel Jimeno, and have seen them write; their signatures, each appearing in two several places on said document, I believe to be their true and genuine signatures respectively; I believe the signature appearing thereon as that of J. A. Sutter to be the true and genuine signature of John A. Sutter; I have correspondence with said Sutter, and written to him, and received answers from him, and believe this to be his signature; I do not remember of ever having seen him write.

Mr. Greenhow objects to this statement in regard to Mr. Sutter's signature, as incompetent proof. J. J. WARNER.

Mr. Greenhow, associate law agent, was present at the taking of this deposition, but propounded no interrogations to the witness.

Subscribed and sworn to before me, at San Francisco, this third day of September, A. D. 1853.

ALPHEUS FELCH, *Commissioner.*

Filed in office Sept. 3d, 1853.

GEO. FISHER, *Sec'y.*

Recorded in Ev. B., vol. 3, p. 132.

GEO. FISHER, *Sec'y.*

[*Here follows map—original, page* 6.]

Exhibit No. 1, *A. F., with map, annexed to Depo. of J. J. Warner.*

Sello Cuarto—Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco. PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

Ex'mo S'or Gobernador:

Guillermo Bennitz, nativo de Allemania, ante V. E. con el mas propuedo respeto se presenta y espone que siendo naturalizado Me-

jicano, y desendo de di carse a la agricultura suplica a V. E. se di que concederle el terreno conocido con el nombre de Bresiguan, cuyo paraje es valdio consta de cinco sitios de ganado mayor, y son sus linderos al N. al E. q'al S. la sierra y al O. el Rio Sacramento, segun manifiésto el diseño que debidamente acompañia.

B. I. A. V. E. mega se de que a ceder a esta su peticion y recevire merced.

Junalo necesario, D. D. Monterey, Junio 18, de 1844.

GUILLERMO BENNITZ.

MONTEREY, *Junio* 18, *de* 1844.

Informe el S. s'rio del departm'to tomando previdamente los qe. puendan resultar. MICHELTORENA.

Dispone el E. S. gobernador, pase esta instancia al S'or Sutter, para que lo sirva informar sobre su contenido.

F'ha la misma. MANUEL JIMENO.

El terreno que solicita el Sr. Dn. Guillermo Bennitz, esta en este pedimiento y que es representado en el adjunto deseño esta desocupado, y do esta certificacion para los fines que le conveynan.

J. A. SUTTER.

Nueva Helvetia, Julio 16, de 1844.

Translation of Exhibit No. 1, *A. F., with map, annexed to the Depo. of J. J. Warner.*

Fourth Stamp—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years eighteen hundred and forty-four and eighteen hundred and forty-five. PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.]

Most Excellent Governor:

Guillermo Bennitz, a native of Germany, before your excellency, with the most profound respect, appears and says that, being a Mexican by naturalization, and wishing to dedicate himself to agriculture, he asks of your excellency that you be pleased to grant to him the land known by the name of "Breinguan," which place is vacant, and contains five square leagues of land, (sitios de ganado mayor,) the boundaries of which are, to the northeast and south the (sierra) mountains; to the west, the Sacramento river, as explained in the sketch which I annex.

Therefore I beg of your excellency, that you accede to this petition, in which I shall receive a favor.

I swear, as necessary, &c.

Monterey, June 18, 1844.

(Signed) GUILLERMO BENNITZ.

(Marginal note.)

MONTEREY, *June* 18, 1844.

Let the secretary of despatch report, taking previously others.
(Signed) MICHELTORENA.

His excellency the governor orders that this petition pass to Señor Sutter, that he may report thereon. Date the same as above.
(Signed) MANUEL JIMENO.

The land solicited by Don Guillermo Bennitz in this petition, and which is represented on the annexed sketch, is unoccupied, and I give this certificate for whatever purposes that be of *imtot* the party.

New Helvetia, July 16th, 1844.
(Signed) J. A. SUTTER.

Most Excellent Governor:

To many petitions like the present a note has been put, that they must wait until your excellency makes a visit about the rivers Sacramento and San Joaquin, and as there is no general maps of those lands the grants asked for cannot be made with certainty; so if your excellency should think fit, this expediente may be detained until these petitions referred to are disposed of.

Monterey, July 26th, 1844.
(Signed) MANUEL JIMENO.

MONTEREY, date the same.

Let him occupy it provisionally until I go up to conclude it.
MICHELTORENA.

Opinion.

WILLIAM BENNITZ vs. THE UNITED STATES. } No. 626.

Claim for a place called Bonisgan, in the county of Shasta, and containing five square leagues.

In this case the petitioner has placed on file an application made by him to Governor Micheltorena, on the 18th day of June, 1844, and states in his petition that the same was referred to John Sutter for his opinion, and that on the 16th day of July, 1844, the said Sutter reported in favor of the issue of a grant, and the signatures of the said Micheltorena and the said Sutter being satisfactorily established by proof.

Here the proceeding on the part of the petitioner ends.

The board are of opinion that no sufficient proofs have been offered to entitle the said petitioner to a confirmation, and that the same should rejected. Rejected.

Filed in office Sept. 27th, 1854.

GEO. FISHER, *Sec'y*

Decree.

WILLIAM BENNITZ vs. THE UNITED STATES. } No. 626.—Bonesgan.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is invalid, and it is therefore decreed that the application for a confirmation be denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office Sept. 27th, 1854.

GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and the *decession* in this case, and the papers and evidence upon which the same are founded, be made out and certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern judicial district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twelve pages, numbered from 1 to 12, both inclusive, to contain a true and full transcript of the record of the proceedings, and of the *decession* of the said board of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 626 on the docket of the said board, wherein William Bennitz is the claimant against the United States for the place known by the name of "Breisgan."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this twentieth day of June, A. D. 1855, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Endorsed: Filed June 20, 1855.

JNO. A. MONROE, *Clerk.*

Notice of Appeal.

Case No. 626.—On appeal from the Board of U. S. Land Commission.

WM. BURRITE, Appellant,
vs.
THE UNITED STATES, Appellee. } Claim for "Breisgan."

SIR: Please to take notice that the claimant in the above case will prosecute the appeal therein.

Yours, respectfully,
CLARKE, TAYLOR, & BEEKH,
Att'ys for Claimant.

San Francisco, May 9th, 1855.

To the CLERK OF THE U. S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Filed May 9th, 1855.

JNO. A. MONROE, *Clerk.*

Petition.

To the honorable District Court of the United States in and for the northern district of California.

WM. BENNITZ, Appellant,
vs.
THE UNITED STATES. } No. 194.—(L. C. Docket No. 626.)

Your petitioner, Wm. Bennitz, respectfully shows, that heretofore, viz., on the 24th day of February, A. D. 1853, he filed before the United States board of land commissioners for California a petition for the confirmation of his claim to a tract of land situate in the northern district of California, viz., in the county of Shasta, for a description of which land, and the title of your petitioner, reference is hereby made to said petition.

That, after hearing said petition, with the proofs and argument of counsel in the case, the said board, on the 26th day of September, A. D. 1854, rejected said claim as invalid; that on the 20th day of June, 1855, a transcript of the record of said case was filed in this court, by virtue whereof, and by force of the statute in that case made and provided, an appeal to this court was duly effected. That on the 9th day of May, 1855, your petitioner filed in this court a notice of his intention to prosecute said appeal.

Your petitioner therefore prays that the decision of said board may be reversed, and that this court may confirm his title to the said land.

Respectfully,

J. CLARK,
Att'y for Claimant.

Filed June 30th, 1855.

JNO. A. MONROE, *Clerk.*

Answer.

In the District Court of the United States, for the northern district of California.

THE UNITED STATES, Appellees,
vs.
WILLIAM BERRITZ. } Case No. 194.

The United States, by their attorney, deny the validity of the title set out in the petition of the said appellants; and pray that the decision of the board of commissioners be affirmed, and that the said title be decreed to be invalid.

WM. BLANDING,
Dist. Att'y.

Filed June 30th, 1855.

JNO. A. MONROE, *Clerk.*

Deposition of Jno. Yates.

No. 194.—Claim of Wm. Bennitz to five leagues of land, called Breisgar.

United States District Court, northern district of California.

SAN FRANCISCO, *August* 31*st*, 1855.

On this day, before me, Geo. Pen Johnston, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John Yates, a witness produced on behalf of the claimant and appellant, in case No. 194, by an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 626 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, J. Clark, counsel for appellant, and
A. Glassell, " " U. S., acting U. S. district attorney.

Question by Claimant.

1st. What is your name, age, and place of residence?

Ans. 1st. My name is John Yates, age 49, and place of residence San Francisco.

Quest. 2d. Are you acquainted with the claimant in this case; and if so, how long have you known him?

Ans'r 2d. I have known him ever since the year 1843, at which time I took him up to Sutter's fort, called New Helvetia; I being in the employ of Captain Sutter, and he being about to engage also in the employ of said Sutter.

Quest'n 3d. State if you are acquainted with the land claimed in this case.

Ans'r 3d. I have examined the papers on file in the office of the board of land commissioners, and recognise the tract of land de-

lineated upon the map of Bennitz filed among the papers. The island there delineated is called Bloody island, from a fight which occurred there between Capt. Sutter and the Indians. The tract is on the east side of the Sacramento river, opposite the land claimed and formerly occupied by Pearson B. Reading.

Question 4th. State what you know of any occupation of the premises by or on account of the claimant Bennitz.

Answer 4th. In the latter part of March, 1845, a French Canadian, by the name of Julian, whom I had known for a considerable time, proposed to me to join him in making a settlement for Bennitz on the premises herein claimed, representing that Bennitz would give a portion of the land for making the settlement; I acceded to his proposition, and we immediately proceeded to make the settlement; we first erected a tent, and planted about an acre in cane; we took with us seeds of various kinds from Sutter's fort; shortly after our arrival we commenced the erection of a substantial wooden building; before the building was finished, when I had been there only some twelve days, the Indians became so troublesome, and, as I thought, so dangerous, that I left the place; Julian remained upon the place, and, as I learned some six months after, was shot by an Indian; after I returned to Sutter's fort, I told Bennitz of the improvements we had made, and my reasons for leaving; I have often heard Bennitz speak of the land as his from that time to this.

Cross-examination by A. Glassell, Assistant U. S. Attorney.

Question. Have you any interest, direct or indirect, in the event of the confirmation of this claim?

Answer. I have none whatever.

JNO. YATES.

Sworn to and subscribed before me, this 31st day of August, A. D. 1850.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Filed August 31, 1855.

JNO. A. MONROE, *Clerk.*

Translation of Gen'l Grant.

Translation of the General Grant.

Manuel Micheltorena, General of Brigade of the Mexican army, Adjutant General of the staff, Governor, *Command* General and Inspector of the Department of the Californias.

Not being able now, on account of being closely occupied this supreme departmental government, to extend one by one the respective titles to all the citizens who have petitioned for lands, with a

favorable information from Señor Don Augustus Sutter, captain, and judge in charge of the jurisdiction of New Helvetia and Sacramento, I, in the name of the Mexican nation, by these letters confer upon them and their families the lands described in their applications and maps, to all and each one of them who has solicited and obtained favorable information from said Señor Sutter up to the day of this date, so that no one can dispute their title. Señor Sutter will give them a copy of this, in furtherance of a formal title, with which they will present themselves to this government, to extend the same title in the proper form, and upon corresponding sealed paper; and for the establishment of which fact, for all time, I give this document, which will be known and acknowledged by all the civil and military authorities of the Mexican nation in this and the other departments.

Duly authenticated with the seal of the government, and the military seal, in Monterey, the 22d of December, 1844.

(Signed) MAN'L MICHELTORENA.

I certify the above as a true copy.

New Helvetia. J. A. SUTTER.

Filed in office April 27th, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Gen'l Grant.

This original exhibited by Captain Sutter, and proved before me.

May 13, 1852. J. W.

Manuel Micheltorena, G'ral de Brigada del Ejercito Mejicano Ayudante G'ral de la Plana Mayor del mismo, Gobernador, Comand'te G'ral y Inspector del Departam'to de Californias.

No pediendo por ahora por estar sumamente occupado este gobierno supremo departamental, estender uno por uno los titulos respectivos á todas los ciudadanos, que han solicitado terrenos con informe á su favor del S'or D. Augusto Sutter, capitan y juez encargado de la jurisdicion de Nueva Elvecia y Sacramento á nombre de la nacion Mejicana les confiero por estras letras la propiedad pa. ellos y sus familias de los respectivos terrenos marcados en sus instanceas y diseños a todas y á cada uno de los q. hallan solicitado y obtenedo informe favorable del espresado. S'or Sutter h'ta hoy dia de la f'ha, sin que; nadie pueda desputarles su propiedad serviendoles una copia de este que les dará mas adelanti el S. Souter de titulo formal con el q. se presentaran á este gobierno pa. estenderles el mismo titulo en la debida forma y papel sellado correspondiente y pa. la debido constancia en todos tiempos doy este documento que. Serra reconocido y acatado por todas las autoridades civiles y militares de la nacion Mejicana ni este y en los demas de-

partamentos autorizado debidamento con los sellos militar y de gobierno en Monterey á veinte y dos de Diciembre de mil ochocientos cuarenta y cuatro.

MAN'L MICHELT'A.

STATE OF CALIFORNIA,
Sacramento County, ss.

On the 28th day of June, A. D. 1850, I, Lewis A. Birdsall, hereby certify that John Bidwell, Samuel J. Hensley, George McKinstry, and Isaac T. Mott, severally came before me, and being duly sworn by me, and being all credible witnesses, depose and say, on oath, that they know Micheltorena, the above named grantor, and are well acquainted with his written signature, having seen him write; and that they verily believe that he signed the above with his own hand.

In witness whereof, I, Lewis A. Birdsall, recorder in and for the county of Sacramento and State of California aforesaid, have set my hand and seal the day and year above written. [L. S.]

L. A. BIRDSALL,
Recorder Sac. Co., California.

H. E. Robinson. Filed for record June 28th, 1850, at 10 o'clock a. m., and duly recorded in book D of deeds, page 140.

LEWIS A. BIRDSALL,
Recorder Sac. Co., Cal.
Per TH. J. ALEY, *Dep'ty.*

John Bidwell. This paper proved by the testimony of John Bidwell before me, April 16th, 1852.

H. HALL, *Com'r.*

I, George Fisher, secretary to the U. S. land commission to ascertain and settle private *private* land claims in the State of California, hereby certify the foregoing to be a true and correct copy of a Spanish document in case No. 201, Sam'l J. Hensley vs. The United States, for Aguas Nieves, now on file in this office.

In testimony whereof, I have hereunto signed my name officially this 6th day of July, A. D. 1855.

GEO. FISHER.

It is hereby stipulated that the foregoing certified copy of the original grant, filed in case No. 201, before the U. S. board of land commissioners for California, with the translations hereunto annexed, be admitted in evidence, as duly proved in the suit William Bennetz vs. The U. States, No. 194, in the dist. court northern dist. of California.

A. GLASSELL, *Ass't U. S. Att'y.*

Filed August 31, 1855.

JOHN A. MONROE, *Clerk.*

Deposition of Adolph Brenheim.

United States District Court, northern district of California.

SAN FRANCISCO, *October 4th, A. D.* 1855.

On this day, before me, Geo. Pen Johnston, commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Adolph Brenheim, a witness produced on behalf of the appellant, in case No. 194, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 626 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

WILLIAM BENITZ
vs.
THE UNITED STATES.

Present, J. Clarke, for appellant; A. Glassell on behalf of the U. S.

Questions by J. Clarke, Esq.

What is your name, age, and how long have you been in California?

My name is Adolph Brenheim; I am thirty-four years of age; and came to California in the summer of 1842, and went to reside at Sutter's fort in August of that year.

Do you know the place or ranch claimed, and do you know Wm. Benitz?

I know both.

What do you know of the occupation or improvement of the ranch claimed by Wm. Benitz?

In the year 1845 a man by the name of Julien, a Canadian Frenchman, was in possession of the land, and held it for the claimant Benitz. He had it under cultivation—raised wheat, corn, watermelons, &c.; he had a home there, and was living in it with his wife. I had several conversations with Julien, and he always told me that he held the land for Benitz. Julien was killed by the Rogue River Indians in 1846.

What do you know about Benitz having located on the said ranch originally?

I was up there the year before—saw the place—thought it a good one, and recommended it. Benitz took the proper steps, and obtained a title.

Cross-examination by Counsel for U. S.

Do you know anything of the ranch in question since 1846?

No.

When was the last time you saw the ranch?

I saw it last in 1845, in November.

When was the first time you ever saw the ranch?

I saw it in 1844, in the spring; the lands then belonged to the government of the country.

How long was Julien on that ranch?

To the best of my recollection, he was there fourteen or eighteen months.

Have you ever been in Julien's house?

I have been.

What sort of a house was it?

It was built of grass, sticks, tules, and willows.

How large was the house?

It was large enough for six or eight persons to live in; it had but one room.

How do you know that Benitz had a grant of that ranch?

He got it from Micheltorena at the time war was declared against Castro and Pico. Any one who joined Micheltorena in that war was to have a grant of land, according to Micheltorena's proclamation. Benitz Partrico Rufus did join Micheltorena, and Benitz also; but Benitz and Rufus both could not leave at the same time—Rufus went with Micheltorena, and Benitz was at Fort Ross. I don't know anything more about Benitz's grant than what I have already testified. I have no interest in this ranch.

When did Julien tell you that he occupied the ranch for Benitz?

He told me twice in 1845.

Do you know whether any person occupied the land after Julien left?

I cannot say, or I don't know whether they did or not.

ADOLPH BRENHEIM.

Sworn to and subscribed before me, this 4th day of October, A. D. 1855.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Filed Oct. 4th, 1855.

JNO. A. MONROE, *Clerk.*

Deposition of E. Rufus.

United States District Court, northern district of California.

SAN FRANCISCO, *Feb'y 28th*, 1856.

On this day, before me, W. H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Ernest Rufus, a witness produced on behalf of the claimant in case No. 194, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 626 on the docket of the said board of commissioners, and was duly sworn and testified as follows: Present, A. Glassell, ass't U. S. district attorney, and J. Clarke, counsel for claimant.

Questions by Counsel for Claimant.

Are you acquainted with the claimant in this case; and if so, how long have you known him?

Answer. I am, and have known him for fifteen years. I know he applied to Micheltorena, in 1844, for a tract of land in the upper part of the Sacramento.

Question 2d. State if you have seen the original papers on file in the office of the board of U. S. land commissions for California, in case No. 626, wherein William Bennitz is claimant, consisting of the petition of said Bennitz to Micheltorena for the tract of land called "Breisgan," the report of Capt. John A. Sutter and Secretary Jimeno, the provisional grant of Governor Micheltorena, and the map of the premises.

Answer. I have seen the above described papers; I saw them in 1845, and they were then just as they are now. I saw Bennitz when he was making the map in the latter part of 1843, or the early part of 1844. About the time he was making said map he did not know what to call the land; Capt. Sutter told him that as he, Bennitz, was from Breisgan, in Germany, he had better give it that name, which he did.

Question 3d. State whether you have examined the signatures of Bennitz, *Jueno*, Micheltorena, and Capt. Sutter, to said documents; and if yea, state whether or not they are in their own proper and genuine handwriting.

Answer. I am well acquainted with the handwriting of each of the above named persons from having often seen them write, and their respective names as they appear on said documents are in their own handwriting.

Question 4th. State, if you know, whether Bennitz ever served in any military capacity under Micheltorena; and if yea, in what, and for what length of time?

Answer. During the space of six or eight months, in 1844, he served under Micheltorena as a member of the Sacramento Riflemen, in the campaign of Micheltorena against the native Californians, and during part of that time he served in the capacity of lieutenant.

Question 5th. State if you have ever heard Micheltorena speak of having made this grant to Bennitz; and if so, upon what occasions, and what he said.

Answer. In the rainy season in the latter part of 1844, I was in Monterey county, at either mission of Solidad or San Antonio, and Micheltorena was there, also Capt. Sutter, in command of the Sacramento Riflemen, composed in great part of foreigners and of the New Helvetian company. Micheltorena made a speech to the troops; he spoke of his own conduct and policy in the contest between the Mexican nation and the native Californians, and spoke of the policy of the Mexican nation towards foreigners; that he had

come with greater powers than had been heretofore exercised by previous governors; that those who had previously applied for land, and to whom he had granted the right to occupy, now had their grants confirmed to them; and that others of foreign birth who were now serving under him, and would continue to do so, would be treated with like liberality, and that hereafter he would protect those settled in the frontier country of the Sacramento better than the Californians had done. Bennitz was present with his company. About a month after that, at San Luis Obispo, a party of our men brought in a prisoner, Miguel Abila. Micheltorena was very much pleased at this; asked who commanded the party that had taken Abila. He was told it was in charge of two men; the one I forget—the other was Bennitz. He then asked, is Bennitz the man who some time ago asked for land? and upon being told he was the identical person, he said, tell him his land has been confirmed to him. At that time I commanded the Indian company, and Capt. Sutter was the commander-in-chief of the two companies.

Question 6th. State what you know about Bennitz having occupied or claimed the land in question, to wit, "Breisgan."

Answer. In 1844, or 1845, he sent a Frenchman named Julio on the place, with cattle and horses, to settle on and occupy the land. Afterwards Julio came down to Sutter's fort for supplies. That is all I know about the occupation of the land. I heard he was afterwards killed by the Indians, and his house on the premises by them burned down. I know that Bennitz has continued to claim the land.

Cross-examined by the U. S. Dist. Attorney.

1st question. What has been your occupation from 1844 up to this time?

Answer. In the year 1844 I was an officer of Micheltorena's army, holding the position of lieutenant of the Nueva Helvetia company. In 1845 said company was disbanded; from that time to 1849, I was farming at Fort Ross, in Sonoma county. Up to 1851 I lived in Sonoma; then I went down to Los Angeles, and was there about two years; I then came to San Francisco and lived for a few months; then I went to Europe, and returned to this country in December, 1855, and have been in Sonoma ever since.

2d question. When did you see the papers above alluded to; for what purpose were they shown to you; how long did you have them before you?

Answer. I took them to Monterey in 1845, for Bennitz; I had them in my possession for the purpose of taking them to a man named Romé, and of getting him to either settle on or purchase a part of the land; Bennitz handed them to me at Fort Ross; I had them during my journey to Monterey, and delivered them to Romé; he was a German by birth and a sailor by occupation. About a

year after, I brought those same papers back to Fort Ross and delivered them to Bennitz.

3d question. Did you see Bennitz on the land before he made the map you speak of? If so, state particulars.

Answer. I did not; I don't remember that he ever told me he had been on the land.

4th question. Did you ever see any other grant of land that Bennitz had, or ever hear him say he had one?

Answer. I never did.

5th question. What are your means of knowing that Bennitz has continued to claim the land referred to?

Answer. He has always spoken to me, saying he would do so and so with the land. Think I have heard him speak to other persons on the subject, but do not recollect who they are.

ERNEST RUFUS.

Sworn to and subscribed before me, February 28, 1856.

W. H. CHEVERS,
U. S. Commissioner.

It is hereby stipulated, that the above deposition be considered in evidence as if taken before and read on the hearing.

J. CLARKE,
Att'y for Claimant.
A. GLASSELL,
Ass't U. S. Dist. Att'y.

February 29, 1856.

Filed February 28, 1856.

JNO. A MONROE, *Clerk.*

Deposition of John A. Sutter.

District Court of the United States, northern district of California.

WILLIAM BENNITZ vs. THE UNITED STATES. } Claim for the tract of land called Breisgan.

John A. Sutter, being duly sworn, deposes and says, that William Bennitz, claimant in the above entitled cause, was one of the persons who had petitioned Governor Micheltorena for land, in the year 1844, and upon whose petitions affiant had reported favorably to said governor, [and that said Bennitz was one of the persons to whom the general grant of said Micheltorena (in evidence in the case of Samuel J. Hensley, in this court,) applies, and in whose favor the said grant was intended to operate.]

J. A. SUTTER. [SEAL.]

Sworn to and subscribed before me, this first day of April, A. D. 1856.

E. DUPRÉ,
[SEAL.] *Notary Public in and for Yuba county, California.*

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It is hereby stipulated, that the within deposition of John A. Sutter be considered in evidence in case No. 194, claim of William Bennitz vs. The United States. The district attorney, at the same time, excepts to the competency of so much of the foregoing affidavit as is included in brackets, on the ground that the same is a statement of a legal conclusion and opinion, and not a statement of facts.

April 3d, 1856. A. GLASSELL,
Ass't U. S. Dist. Att'y.

Filed April 2d, 1856. J. A. MONROE, *Clerk.*

Opinion.

THE UNITED STATES
vs.
WILLIAM BENNITZ.

The appellant in this case claims under the general grant by Governor Micheltorena, on the 22d December, 1844, which has already been considered and passed upon by this court in the case of S. J. Hensley.

It appears in evidence that the present claimant was one of those in whose favor Capt. Sutter had reported, and for whose benefit the general grant was made.

It further appears that the claimant in 1845 placed a tenant upon the land, by whom a portion of it was cultivated, and who continued to reside upon it until the summer or fall of 1846, when he was killed by the Indians.

There seems no reason to suppose that the claimant ever abandoned his grant, and under the ruling of this court in the case of Hensley, we think the claim should be affirmed.

April 5, 1856.

Decree of Confirmation.

WILLIAM BENNITZ
vs.
THE UNITED STATES.
Decree No. 194.—Stated term, April 7th, 1856.

Appeal from the final decision of the commissioners to ascertain and settle private land claims in California.

This cause coming on this day to be heard upon appeal from the decision of the commissioners to ascertain and settle private land claims in the State of California, under the act of Congress approved March 3d, 1851, upon the transcript of proceedings and decision, and the papers and evidence on which said decision was founded, and the pleadings and evidence filed in this court; and it appearing to the court that said transcript was duly filed according to law, and counsel having been heard on the part of the United States, and for claimant, it is now considered, ordered, adjudged, and decreed by the court, that the said decision of the commis-